

EXAMINER'S REPORT

Preliminary remark: the references from the Guidelines are from the version of the Guidelines which was to be used in the present examination.

Question 1

EP-G was filed within 12 months from the filing of IT-G, Article 87(1) EPC. Only claims 1 and 3 of EP-G are directed to the same invention as IT-G (frame made of metal and frame made of aluminium), Article 87(1) EPC and G2/98. The withdrawal of the priority application IT-G has no effect on its validity, Article 87(3) EPC. IT-G is the first filing. The priority for claims 1 and 3 being valid, the effective date under Article 89 EPC for these two claims is the filing date of IT-G. Therefore, the catalogue is not prior art within the meaning of Article 54(2) EPC for claims 1 and 3. However, the effective date of the subject-matter of claims 2 and 4 is the date of filing of EP-G (frame made of steel and frame made of copper were not disclosed in IT-G), Article 89 EPC. Thus, the catalogue is prior art under Article 54(2) EPC for these two claims.

1.1 – False

1.2 – True

1.3 – False

1.4 – True

Question 2

The renewal fee in respect of the third year for Euro-PCT-J has fallen due earlier, on 31 August 2016, Article 86(1) EPC and Rule 51(1) EPC. For PCT-J, one of the requirements for entry into the European phase today, 6 March 2017 is the payment of the renewal fee in respect of the third year, Rule 159(1)(g) EPC and Guidelines, A-X, 5.2.4. Also the designation fee is due today, since the period under

Rule 39 EPC has expired earlier (six months after the publication of the search report, *i.e.* in August 2016). Note that according to Article 153(6) EPC, the international search report takes the place of the European search report and the mention of its publication. The latest date for entering the European phase with EP-J is today, 6 March 2017 [4 August 2014 + 31 months (= 4 March 2017), extended to 6 March 2017, Rule 159(1) EPC, Rule 131(4) EPC and Rule 134(1) EPC]. Today no further processing fee is (yet) due. The EPO shall carry out a supplementary European search, Article 153(7) EPC and Guidelines B-II 4.3.2 (ii) (see also OJ EPO 2005, 422).

2.1 – True

2.2 – True

2.3 – False

2.4 – True

Question 3

Guidelines, A-IV, 1.1.1 is referred to: an application is not pending if it is deemed to be withdrawn due to the non-observance of a time limit, for instance failure to reply to a communication under Rule 71(3) EPC or failure to pay the renewal fee.

Conversely, an application is pending if it was refused and if no appeal has yet been filed until the expiry of the time limit for filing the notice of appeal [28 December 2016 + 10 days (Rule 126(2) EPC) + 2 months (Rule 131(4) EPC) = 7 March 2017], see also G1/09. Thus EP3 is pending until 7 March 2017. For EP4, the decision to grant is issued before the publication of the mention of the grant. The decision to grant a European patent does not take effect until the date on which the grant is mentioned in the European Patent Bulletin, Article 97(3) EPC: thus EP4 is still pending today.

3.1 – False

3.2 – False

3.3 – True

3.4 – True

Question 4

Adrienn is a natural person resident in Hungary: therefore, she is entitled to a reduction of the filing fee, Article 14(4) EPC and Rule 6(3)(b) EPC. One or more claims must be filed within two months of an invitation under Rule 58 EPC to correct the deficiency under Rule 57(c) EPC. A translation of the description must be filed within two month of filing of the European patent application, Rule 6(1) EPC. see also Guidelines, A-VIII, 1.1. The filing fee must be paid within one month of filing of EP-A, Rule 38(1) EPC.

4.1 – True

4.2 – False

4.3 – True

4.4 – False

Question 5

The statement setting out the grounds for the appeal must be filed at the latest on 18 April 2017 [5 December 2016 + 10 days (Rule 126(2) EPC) + 4 months (Article 108 EPC and Rule 131(4) EPC) = 15 April 2017, extended to 18 April 2017, Rule 134(1) EPC]. The appeal fee is reimbursed, if the appeal is withdrawn before the filing of the statement of grounds of appeal (and before the period for filing that statement has expired), Rule 103(1)(b) EPC. If the appeal is not allowed within three months of receipt of the statement of grounds, it shall be remitted to the Board of Appeal, Article 109(2) EPC. Statement 5.4 is silent regarding inventive step of claim 1 vs. D2. If interlocutory revision is to be granted, the applicant must address convincingly both grounds for refusal.

5.1 – False

5.2 – True

5.3 – False

5.4 – False

Question 6

The notice of opposition against EP-V must be filed at the latest on 20 February 2017 [18 May 2016 + 9 months (Article 99(1) EPC and Rule 131(4) EPC) = 18 February 2017, extended to 20 February 2017, Rule 134(1) EPC]. If the opposition fee is not paid within the 9 month opposition period, the opposition is not deemed to have been filed, Article 99(1) EPC, second sentence. The opponent cannot remedy a deficiency under Rule 76(2)(c) EPC, such as not mentioning sufficient facts and evidence. In such a case the opposition has to be rejected as inadmissible, see Rule 77(1) EPC, see also Guidelines, D-IV, 1.2.2.1 (v). However, the opponent can remedy a deficiency under Rule 76(2)(b) EPC, such as not mentioning the name of the patent proprietor, Rule 77(2) EPC, see also Guidelines, D-IV 1.2.2.2 (ii).

6.1 – True

6.2 – True

6.3 – False

6.4 – True

Question 7

Rule 80 EPC only requires that amendments made in opposition proceedings must be occasioned by the grounds for opposition specified in Article 100 EPC. It is not a requirement of Rule 80 EPC that the amendments actually resolve issues raised in the notice of opposition. Although clarity is not a ground for opposition, in the present case the clarity of the amended claim can be discussed, since the amendment, which was introduced during opposition proceedings, is based on the description (G3/14). The patent proprietor is entitled to file amendments in reply to the communication informing him of the notice of opposition. Since the patent proprietor

requests to maintain the patent in amended form (in accordance to Article 101(3)(a) EPC), his request is not to reject the opposition (in accordance with Article 101(2) EPC).

7.1 – False

7.2 – False

7.3 – True

7.4 – False

Question 8

A communication by the EPO is deemed to be delivered on the tenth day following its posting (Rule 126(2) EPC). For the legal fiction of the deemed delivery, it is immaterial whether the tenth day falls on a Saturday or Sunday. The proceedings are interrupted with legal effect from the date of the occurrence of the event, in this case the legal incapacity of the representative, Rule 142(1)(c) EPC and Guidelines, E-VI, 1.3. The communication dated 7 September 2016 would be considered null and void and would be notified anew to the new representative only in a case where the communication was notified during an interruption period, Guidelines, E-VI, 1.4: this is not the case here. There is no provision in the EPC for paying fees for requesting interruption of the proceedings.

8.1 – False

8.2 – False

8.3 – False

8.4 – True

Question 9

The wording of the claim in statement 9.1 (in the so-called Swiss-type format) is directed to a further medical use of substance Z and can only be used for applications with a filing or priority date before 29 January 2011, see G2/08 and

Guidelines, G-VI, 7.1. The wording of the claim in statement 9.2 is correctly formulated as a further (so called “second”) medical use in accordance with Article 54(5) EPC, see also Guidelines, G-VI, 7.1.2. The wording of the claim in statement 9.3 is explicitly excluded by Article 53(c) EPC. The subject-matter of the claim in statement 9.4 is not novel with respect to the disclosure of the pre-published scientific paper, Article 54(4) EPC.

9.1 – False

9.2 – True

9.3 – False

9.4 – False

Question 10

According to Rule 54*bis*1.(a)(ii) PCT, in the present case of PCT-A, an international preliminary examination can be requested at any time prior to the expiration of 22 months from the priority date. Therefore, on 30 November 2017 a valid demand can be filed. A handling fee is due for requesting the international preliminary examination, Rule 57.1 PCT. The applicant is entitled to communicate orally with the EPO as the International Preliminary Examination Authority, Article 34(2)(a) PCT. If amended claims for PCT-A are received by the International Bureau before the technical preparations for international publication have been completed, then the international publication of PCT-A will contain the full text of the claims both as filed and as amended, Rule 46.1 PCT and Rule 48.2(f) PCT.

10.1 – True

10.2 – True

10.3 – True

10.4 – True

Question 11

11.1 **True:** The toothbrush of the first embodiment of the application is covered by the scope of claim I. Particularly, controller 133 is a switching means for selectively supplying electric energy from the battery to the electrically operated element. The controller connects the vibrator to the battery, and thereby controls vibrations generated by the vibrator 134 when the push button is pressed down by the user. Further, the brush body of the first embodiment is a (unitary) brush body in which the brush head is (fixedly) connected to the handle (see paragraphs [002] and [006]).

11.2 **True:** The toothbrush of the second embodiment of the application is covered by the scope of claim I. Particularly, controller 233 functions in the same way as in the first embodiment. The feature "neck is connected to the handle" in claim I also covers a connection by means of a connection hole 212 and a connection protrusion 231. Further, the brush body of the second embodiment includes a handle and a replaceable brush head (see paragraphs [002] and [007]).

11.3 **True:** The toothbrush of the third embodiment of the application is covered by the scope of claim I. Particularly, controller 333 is a switching means for selectively supplying electric energy from the battery to the electrically operated element. The controller connects the vibrator to the battery only as long as the user is pressing the bristles against the teeth and thereby generates a pressure signal. Further, the brush body of the third embodiment includes a handle and a replaceable brush head (see paragraphs [002] and [008]).

11.4 **True:** The toothbrush of the fourth embodiment of the application is covered by the scope of claim I. The presence of an additional LED is not ruled out by the formulation "the body comprises...".

Question 12

12.1 **True:** In particular, D1 discloses a switching means for selectively supplying electric energy from a battery to an electrically operated element since pressure sensor 18 in combination with controller 14 functions as a switching means. Excessive pressure will cause the controller to turn off the green LED and to turn on the red LED.

12.2 **False:** D1 discloses a body for a toothbrush providing increased dental plaque removal. The toothbrush of D1 must be considered as being suitable for "increased dental plaque removal", since toothbrushes are used for cleaning teeth, and for removing dental plaque (see paragraph [001] of D2). Further, the relative term "increased" does not seem to have any well-defined meaning in the art of toothbrushes, and therefore must be interpreted broadly.

The body has a brush head with a bristle zone for holding bristle bundles, a handle and a neck between the bristle zone and the handle, and the neck is connected to the handle (see figure 1 of D1).

The body comprises a battery (15), an electrically operated element (each of the two LEDs 16 and 17) and a switching means (14, 18) for selectively supplying electric energy from the battery to the electrically operated element. Pressure sensor 18 in combination with controller 14 is a switching means for selectively supplying electric energy from the battery to the electrically operated element, since it allows controller 14 to connect each of the LEDs to the battery, and excessive pressure will cause the controller to turn off the green LED and to turn on the red LED. In addition to that, D1 explicitly discloses "switching" in the statement "controller 14 switches the energy supply to red LED 17" (paragraph [003] of D1).

12.3 **False:** The melody played in D2 shall have the effect that children brush their teeth for a longer period of time (see paragraph [001] of D2). A longer period of time automatically increases the plaque removal compared to brushing teeth for a shorter period of time.

12.4 **False:** D2 discloses a body for a toothbrush providing increased dental plaque removal. The toothbrush of D2 is suitable for “increased dental plaque removal” (see paragraph [001]). Further, the relative term “increased” does not seem to have any well-defined meaning in the art of toothbrushes, and therefore must be interpreted broadly.

The body has a brush head with a bristle zone for holding bristle bundles, a handle and a neck between the bristle zone and the handle, and the neck is connected to the handle (see paragraph [002] and figure 1 of D2).

The body comprises a battery (25), an electrically operated element (music module 26 with a loudspeaker) and a switching means (24, 27) for selectively supplying electric energy from the battery to the electrically operated element. Sensor 27 allows controller 24 to act as a switching means for selectively supplying electric energy from a battery to an electrically operated element, since controller 24 supplies electric energy to the music module 26 only as long as controller 24 receives the signal generated by sensor 27. Controller 24 thereby switches the music module ON/OFF (paragraph [002] and figure 1).

Question 13

13.1 **True:** The claimed range of from 18-25 cm in claim 1.2 covers a toothbrush having a length of 24 cm.

13.2 **False:** The specific disclosure of 24 cm in D1 is within the claimed range.

13.3 **False:** The specific combination of (1) a length of 15 cm, (2) a body made from polypropylene, and (3) bristles made from polypropylene is not explicitly disclosed in D2. Such combination of features is a selection from three lists of a certain length, and must therefore be considered novel (Guidelines, G-VI, 8.i).

13.4 **True:** The feature "brush head with a bristle zone for holding bristle bundles" does not require the presence of bristle bundles, since the bristle zone must only be suitable for holding them. Therefore, a body without bristle bundles is covered

by claim I, if the bristle zone of that body is suitable for receiving bristle bundles in a further manufacturing step after e.g. the injection moulding of the body.

Question 14

14.1 **True:** Neck 111 is connected to handle 130. The feature "connected to" is not limited to a connection section consisting of a connection hole and a connection protrusion, as in the second or third embodiments in FIGS 2 or 3.

14.2 **True:** There is a connection section in FIG. 2, which consists of connection hole 212 and connection protrusion 231. That connection section connects the neck to the handle.

14.3 **True:** The feature "switching means" is not restricted to a push button, since "for example a push button" is an optional feature. Controller 333 is a switching means for selectively supplying electric energy from the battery to the electrically operated element, since controller 333 meets the definition given in paragraph [004] of the application, i.e. it connects and disconnects vibrator 334 from battery 335.

14.4 **False:** There is no push button in the third embodiment according to FIG. 3, since the pressure sensor is described as an alternative to the push button (paragraph [008] of the application).

Question 15

15.1 **False:** The formulation "the body comprises..." in claim II.3 does not exclude the presence of further elements which are not mentioned in the claim. See Guidelines, F-IV, 4.21. Claim II.3 does not contain any disclaimer. Furthermore, the feature "switching means" is not restricted to a push button, since "for example a push button" is an optional feature.

15.2 **False:** Claim II.4 is a dependent claim, and therefore contains all the features of independent claim II. The electrically operated vibrator is claimed in claim II. Furthermore, claim II.4 does not contain any disclaimer.

15.3 **False:** Claim II.4 is a dependent claim, and therefore contains all the features of claim II. The location of the vibrator is not specified in claim II.

15.4 **False:** There is no indication in the application that electric cables cannot be present in the brush head.

Question 16

16.1 **False:** Claim II is not restricted to (tooth)brushes for humans. Claim II therefore does not exclude toothbrushes for zoo animals. In addition to that, claim II is not restricted to brushes with replaceable brush heads, nor mentions any length of the brush.

16.2 **False:** A “brush designed for human use” is considered to be a brush suitable for human use. D4 – notwithstanding its suitability for human dental cleaning - explicitly discloses the “human use” of scratching one's back (paragraph [004] of D4).

16.3 **False:** That would be an undisclosed disclaimer within the meaning of G1/03. Document D4 belongs to the state of the art under Article 54(2), and belongs to a neighbouring field. As D4 is potentially relevant for the assessment of inventive step, it may not be disclaimed by means of an undisclosed disclaimer. The criteria set out in G1/03 are therefore not met.

16.4 **False:** All features of claim II.2 are present in D4. D4 discloses a brush with a body, wherein the body comprises a brush head with a bristle zone, bristle bundles held by the bristle zone, a handle and a neck between the bristle zone and the handle, wherein the neck is connected to the handle (see paragraph [002] and figure 1 of D4).

The body comprises a battery (45) and an electrically operated element (47), wherein the electrically operated element is an electrically operated vibrator (see paragraph [002] of D4), wherein the neck is connected to the handle by means of a connection section (paragraph [002] of D4).

Question 17

17.1 True: The statement is directed to claims filed with the client's patent application. These claims may therefore serve as a basis for the amendment, even if there might not be a corresponding disclosure in the description. The feature is disclosed in dependent claim II.3, which was directly dependent on claim II. The original disclosure "switching means, for example a push button" in claim II.3 may be restricted to a push button, since claim II.3 must be construed in the sense that a push button is a switching means. Claim II.4, which also mentions a controller that is not recited in the proposed amendment, therefore does not have to serve as basis for the amendment.

17.2 False: A pressure sensor in the bristle zone is disclosed in paragraph 008 as an alternative to a push button in the handle. The client's patent application does not contain any statement which would justify the combination of these features.

17.3 True: This feature is disclosed in the general part of the description (paragraph 001).

17.4 True: This statement does not ask whether the amendment constitutes an unallowable intermediate generalisation under Article 123(2) EPC. An electrically operated vibrator in the handle is disclosed in paragraph [004] or in any of FIG. 1 to FIG. 4 only in combination with a controller in the handle and a battery in the handle. Claim II neither contains a feature directed to a controller, nor does it restrict the location of the battery to a battery in the handle. The amendment therefore is an intermediate generalisation, i.e. an amendment extracting a specific feature in isolation from an originally disclosed combination of features and using it to delimit claimed subject-matter, see Guidelines, H-V, 3.2.1).

Question 18

18.1 **True:** The application mentions that the replaceability of the brush head is achieved by the provision of a connection hole at the end of the neck, which will engage with a connection protrusion on the handle (paragraph [007] of the application).

18.2 **False:** The replaceability of the brush head is already achieved by the provision of a connection hole at the end of the brush head, which will engage with a connection protrusion on the handle (paragraph [007] of the application). Such a configuration is already disclosed in D2, which thereby at least implicitly relates to easy replacement of the brush head (paragraph [004] of D2). The objective technical problem, however, must be based on a feature which is not disclosed in the closest prior art.

18.3 **True:** This effect is achieved by the presence of a vibrator in the toothbrush (paragraphs [004] and [006] of the application).

18.4 **False:** Although there is a slight difference of the German language version compared to the French and English versions[*], paragraph [003] of D2 clearly discloses in all three languages that vibrations are generated via the loudspeaker. The melody is played over the loudspeaker of the music module, which is located in the handle. The loudspeaker converts the electrical signal so as to play a melody and generate vibrations in the air. Hence, the music module 26 and its loudspeaker is an electrically operated vibrator in the handle.

[*] See D 0001/17.

Question 19

19.1 **False:** The disclosure of a length of 24 cm in D3 takes away novelty of the claimed range of from 18 to 25 cm. Said range should therefore be placed in the preamble.

19.2 **True:** The objective technical problem underlying the above feature may be regarded as allowing users to replace a worn brush head (paragraph [007] of the patent application). D2 discloses the combination of a connection hole and a connection protrusion as solution to that problem (paragraph [004] of D2). The fact that D2 is directed to children's toothbrushes does not render D3 and D2 incompatible.

19.3 **False:** The vibrator of D2 serves a different purpose (paragraph [003] of D2: music) than that of D3 (paragraph [002] of D3: increasing the amount of dental plaque removed from the teeth).

19.4 **False:** D3 relates to toothbrushes for adults (paragraph [001] of D3).

Question 20

20.1 **False:** D4 already discloses a first embodiment in which the connection section comprises a connection hole and a connection protrusion. In the second embodiment of D4, the electrically operated vibrator is already located in the handle.

20.2 **False:** The second embodiment of D4, in which the vibrator is located in the handle, only suggests scratching one's back while taking a shower.

20.3 **False:** The first embodiment of D4 discloses a minimum length of 40 cm, and hints at much longer brushes. The first embodiment of D4 therefore does not represent the most promising starting point, at least in view of the feature "length of the toothbrush is between 18 and 25 cm.". The second embodiment of D4 only relates to scratching a human's back. That second embodiment therefore belongs to an entirely different technical field. Compared to D4, D2 or D3 are more promising starting points.

20.4 **False:** Even that combination does not disclose all the features of claim III, since none of the two embodiments of D4 discloses the feature “length of the toothbrush is between 18 and 25 cm”.



Antwortblatt / Answer sheet / Feuille de réponses

Anweisung zum Ausfüllen des Antwortblatts		Instructions on how to fill in the answer sheet		Instructions pour remplir la feuille de réponses	
Füllen Sie das Feld so aus:	Füllen Sie das Feld NICHT so aus:	Fill in the field this way:	DO NOT fill in the field this way:	Remplir le champ de la façon suivante:	NE PAS remplir le champ de la façon suivante:
1. Verwenden Sie einen schwarzen mittelweichen HB Bleistift		1. Use a black medium soft HB pencil		1. Utiliser un crayon noir à mine moyenne HB	
2. Entfernen Sie unbeabsichtigte Markierungen vollständig		2. Erase any unintended marks completely		2. Gommer complètement toutes marques involontaires	
3. Knicken Sie dieses Blatt nicht		3. Do not bend this sheet		3. Ne pas plier cette feuille	

Frage Question Question	AUSSAGE / STATEMENT / AFFIRMATION							
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